
ATTORNEY FOR APPELLANT:

**JEFFRY G. PRICE**
Peru, Indiana

ATTORNEY FOR APPELLEE:

**MICHAEL E. BOONSTRA**
Logansport, Indiana

# IN THE COURT OF APPEALS OF INDIANA

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| IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF J.S., a minor child, and Lorinell Sherman and Earl Sherman II, her parents, | ) | |
| LORINELL SHERMAN and EARL SHERMAN, II, | ) | |
| Appellants-Respondents, | ) | |
| vs. | ) | No. 09A02-0801-JV-51 |
| DEPARTMENT OF CHILD SERVICES OF CASS COUNTY, | ) | |
| Appellee-Petitioner. | ) | |

APPEAL FROM THE CASS CIRCUIT COURT
The Honorable Leo T. Burns, Judge
Cause No. 09C01-0706-Jt-6

**July 2, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-respondents Lorinell Sherman and Earl Sherman II appeal the involuntary termination of their parental rights as to their minor child, J.S., in an action initiated by the Cass County Department of Child Services (DCS). Specifically, the Shermans argue that the trial court's findings of fact are insufficient to support the involuntary termination of their parental rights. Because the evidence and the inferences that can be drawn therefrom support the decision to terminate the Shermans' parental rights, we affirm the judgment of the trial court.

FACTS

J.S. was born on March 7, 2001, in Cass County. Earl and Lorinell are J.S.'s natural parents. When J.S. was six months old, the family was living in a trailer on the property of Earl's parents, and on September 12, 2001, DCS removed J.S. due to neglect and substandard living conditions. Specifically, the trailer was dirty, filled with cockroaches, had broken windows, and it was reported that the Shermans had been smoking marijuana in front of J.S. Ex. I p. 2. J.S. was adjudged a child in need of services (CHINS) on September 13, 2001, and was removed from the home. Services were provided to the Shermans and J.S. was reunited with them January 10, 2002.

The next incident between DCS and the Shermans occurred on February 26, 2006. Five-year-old J.S. was found by law enforcement officials around noon—riding her tricycle, blocks from home—on a busy street proceeding towards Logansport. Law enforcement officials noticed that she smelled of urine, was dirty, and had tangled hair.

Ex. C p. 1. When the officials took J.S. home, they found Lorinell and Earl asleep on the couch, unaware that their daughter had been missing. Id.

J.S. was again adjudicated a CHINS on March 8, 2006. A dispositional decree was entered on April 12, 2006. J.S. was removed from the Shermans' care pursuant to the dispositional decree and has remained in foster care since that time. The petition to terminate parental rights was filed on June 19, 2007, and a hearing was held on September 12, 2007, and September 24, 2007. The trial court granted DCS's petition, finding in pertinent part as follows:

> The conditions that resulted in the child's removal . . . will not be remedied because . . . [the parents] have demonstrated a lack of understanding parental roles and responsibility, they are focused on their own self-centered needs and there is a documented lack of general commitment to the task of parenting all to the detriment of the child's best interest.
>
> . . . [T]he repeated and continuing separation of the child from the parents resulted in the child developing a series of attachment difficulties including the inability to display sad emotion, lack of empathy for others and a struggle with peer relationships.
>
> . . . The parents have been inconsistent in their response to services and programs. During time of supervision, the parents loss of focus of the goal of reunification is documented, as is the parents repeated lack of follow-through. [T]he parents have failed to demonstrate that they can provide a nurturing, safe and stable home.

Appellant's App. p. 6. The Shermans now appeal.

## DISCUSSION AND DECISION

### I. Standard of Review

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. But parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of

a petition to terminate parental rights. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility, considering instead only the evidence and reasonable inferences that are most favorable to the judgment. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

The Shermans argue that the trial court's written findings in the termination order are inadequate. However, the trial court is not required to make findings of fact in termination cases unless the parties have specifically requested the court to do so. Parks v. Delaware County Dep't of Child Servs., 862 N.E. 2d 1275, 1281 (Ind. Ct. App. 2007). In the present case, it is not apparent from the record that either party made a specific request for factual findings from the trial court. Therefore, we will examine the findings and will set them aside only if they are clearly erroneous. Id. A finding is clearly erroneous only if the record contains no facts to support it or no inferences can be draw therefrom. Id.

## II. Sufficiency of the Evidence

The Shermans argue that DCS failed to present clear and convincing evidence to support the termination of their parental rights.[1] Specifically, the Shermans argue that DCS failed to show by clear and convincing evidence that the probability of continuing the parent-child relationship posed a threat to the well being of J.S. Appellant's Br. p. 5.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the following elements:

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> >
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

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[1] The Shermans also argue that DCS "rushed to judgment" in petitioning to terminate their parental rights. Appellant's Br. p. 12. An examination of the record indicates that this particular argument was never raised in a motion prior to or during the termination hearing. Therefore, this argument has been waived and we will not address it.

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual patterns of conduct must also be evaluated to determine the probability of future negative behavior. Id. The trial court need not wait until a child is irreversibly harmed such that her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000).

Here, the trial court found that there was a reasonable probability that the conditions that resulted in the removal would not be remedied in the future and also that the continuation of the parent-child relationship poses a threat to the well being of J.S. Appellant's App. p. 6.

Dr. Michael L. Rupley, Ph.D., a clinical psychologist, evaluated the mental health and parenting skills of the Shermans. Dr. Rupley noted in his report that Lorinell has Borderline Personality Disorder. Among other things, this disorder causes Lorinell to

have difficulty bonding with J.S., which will eventually cause adverse consequences for the child. Ex. A p. 29-30. Dr. Rupley testified that Lorinell could not be a capable parent to J.S in the foreseeable future and that Earl's parenting capabilities were "iffy." Appellee's App. p. 2. Further, Dr. Rupley stated that the court should not leave J.S. in foster care and, instead, recommended a decision on parental rights within six months to one year for the sake of J.S.'s well-being. Ex. A p. 31. He stated that J.S. has been damaged from the "ignorance, self-centeredness, and the lack of general commitment to the task of parenting" from her parents. Id. at 32.

Dr. Rupley's report also details the Shermans' inconsistent adherence to the case plan that was set up in March of 2006. He notes, "both parents had to be continually prompted to comply with various facets [of the plan]." Ex. A p. 4. Frequently, the Shermans had to be reminded to rid the house of trash. Id. Lorinell has had an "extremely poor" track record of attending her scheduled counseling sessions. Id. at 5. Earl also has had a "hot and cold . . . hit and miss" involvement in his scheduled psychotherapeutic sessions. Id. at 6. In an April 18, 2007, review, DCS noted that the parents have been "inconsistent with services . . . lose sight of their goals and lack the follow-through needed to complete them." Ex. F p. 6.

Sarah Kirkwood, J.S.'s clinical social worker, testified that J.S. has a retroactive attachment disorder, which leads to difficulty in bonding with and trusting others. Tr. p. 40. Jackie Petrie, a home-based caseworker, provided services to the Shermans at the request of DCS. Petrie concluded that she did not believe that the Shermans would be willing and/or able to maintain a clean home in the future. Id. at 65.

Amanda Shelton, a case manager for DCS, testified that the conditions of the Shermans' home were sufficient as of August 2007. Id. at 117. However, we must examine the habitual patterns of conduct and not solely look to short-term improvements. See Bartrum v. Grant County Office of Family & Children, 772 N.E. 2d 522, 530 (Ind. Ct. App. 2002). While we applaud the Shermans for their recent improvements in cleanliness, we must also take the last seven years of behavior into consideration.

Lisa Hsieh, a visitation facilitator, observed J.S. and her parents during visits, set goals with the parents, and provided drug screenings. Earl tested positive for marijuana in April 2007. Appellee's App. p. 59. Hsieh testified that the parents "ignored [J.S.'s] needs" and that she had continual concerns for J.S.'s safety while the child was in her parents' care. Tr. p. 72.

Jennifer Hatfield, an employee at Villages Foster Care, testified that J.S. is affectionate, happy, and outgoing at her foster home. Id. at 81. J.S. is currently in school and has been receiving positive progress reports. Id. at 82. Just a year earlier, J.S. was struggling in school and was academically delayed. Appellee's App. p. 40.

In sum, the evidence provides that the Shermans have wavered in their participation in DCS services, lacked commitment to improving their parenting skills, and have had difficulty maintaining a clean home. We agree with the trial court's finding that the parents have "demonstrated a lack of understanding parental roles and responsibility, . . . are focused on their own self-centered needs and . . . lack [a] general commitment to the task of parenting, all to the detriment of the child's best interest."

Appellant's App. p. 6. Ultimately, the evidence in the record supports the trial court's determination to terminate the Sherman's parental rights.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.